

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 246

92ND GENERAL ASSEMBLY

Reported from the Committee on Commerce and the Environment, January 30, 2003, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 246, adopted February 17, 2003.

Taken up for Perfection February 17, 2003. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0728S.07P

AN ACT

To repeal sections 386.050, 386.120, 386.210, 392.200, and 393.015, RSMo, and to enact in lieu thereof seven new sections relating to the public service commission.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 386.050, 386.120, 386.210, 392.200, and 393.015, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 386.050, 386.120, 386.135, 386.210, 386.374, 392.200, and 393.015, to read as follows:

386.050. **1.** The commission shall consist of five members who shall be appointed by the governor, with the advice and consent of the senate, and one of whom shall be designated by the governor to be [chairman] **chair** of [said] **the** commission. Each commissioner, at the time of [his] **the commissioner's** appointment and qualification, shall be a resident of the state of Missouri, and shall have resided in [said] **the** state for a period of at least five years next preceding [his] **the** appointment and qualification, and [he] shall also be a qualified voter therein and not less than twenty-five years of age. Upon the expiration of each of the terms of office of the first commissioners, the term of office of each commissioner thereafter appointed shall be six years from the time of [his] **the commissioner's** appointment and qualification and until

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

his successor shall qualify. Vacancies in [said] **the** commission shall be filled by the governor for the unexpired term.

2. On or after the effective date of this act, no member of the commission or technical advisory staff shall establish or maintain a committee that is regulated by the campaign finance disclosure law in chapter 130, RSMo, except those members who were members and had established such a campaign committee prior to January 1, 2003. No member of the commission who established and maintained such a campaign committee prior to the effective date of this act, shall allow contributions or deposits to be made into such campaign committee nor expenditures to be made by or on behalf of such campaign committee during the time period that such person is a member of the commission. Nothing in this subsection shall be construed to limit or prohibit the activities of members of the commission, or the activities of such regulated campaign committees, which activities occurred prior to January 1, 2003. Any member able to maintain a committee pursuant to the provisions of this section, due to campaign committee's existence prior to January 1, 2003, shall be required to disclose the existence of the committee prior to the initial hearing on all matters before the commission and to all litigants in writing in any matter coming before the commission.

386.120. 1. The principal office of the commission shall be at the state capital at the city of Jefferson City. The commissioners shall reside within [a forty-mile radius of the city of Jefferson City] **the state of Missouri** during their respective terms of office. The office required by this subsection shall be provided and assigned by the board of public buildings.

2. The commission shall at all times, except Saturdays, Sundays and legal holidays, be open and in session for the transaction of business and the commissioners shall devote their entire time to the duties of their office.

3. The commission shall have an official seal bearing the following inscription: "Public Service Commission of the State of Missouri". The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of such seal.

4. The commission may sue and be sued in its official name. The offices of said commission shall be supplied with all necessary books, maps, charts, stationery, office furniture, telephone and telegraph connections, and all other necessary appliances and incidentals, to be paid for in the same manner as other expenses authorized by this chapter.

5. The offices of the commission shall be open during business hours on all days except Saturdays, Sundays and legal holidays, and one or more responsible persons, designated by the commission or by the secretary, under the direction of the commission, shall be on duty at all times, in immediate charge thereof.

6. Any summons or other writ issued by any court of this state or of the federal government shall be served upon the secretary of the commission or on any commissioner at the principal office of the commission in Jefferson City. Service of any summons or other writ upon the secretary of the commission, or upon any single commissioner, shall constitute service upon the entire commission.

386.135. 1. The commission shall have an independent technical advisory staff of six full time employees. The advisory staff shall have expertise in accounting, economics, finance, engineering/utility operations, law, and public policy.

2. In addition, each commissioner shall also have the authority to retain one personal advisor, who shall be deemed a member of the technical advisory staff. The personal advisors will serve at the pleasure of the individual commissioner whom they serve and shall possess expertise in one or more of the following fields: accounting, economics, finance, engineering/utility operations, law, and public policy.

3. The commission shall only hire technical advisory staff pursuant to subsections 1 and 2 of this section if there is a corresponding elimination in comparable staff positions for commission staff to offset the hiring of such technical advisory staff on a cost neutral basis. Such technical advisory staff shall be hired on or before July 1, 2004.

4. It shall be the duty of the technical advisory staff to render advice and assistance to the commissioners and the commission's hearing officers on technical matters within their respective areas of expertise that may arise during the course of proceedings before the commission.

5. The technical advisory staff shall also update the commission and the commission's hearing officers periodically on developments and trends in public utility regulation, including updates comparing the use, nature, and effect of various regulatory practices and procedures as employed by the commission and public utility commissions in other jurisdictions.

6. Each member of the technical advisory staff shall be subject to any applicable ex parte or conflict of interest requirements in the same manner and to the same degree as any commissioner, provided that neither any person regulated by, appearing before, or employed by the commission shall be permitted to offer such member a different appointment or position during that member's tenure on the technical advisory staff.

7. No employee of a company or corporation regulated by the public service commission, no employee of the office of public counsel or the public counsel, and no staff members of either the utility operations division or utility services division, who, were an employee or staff member on, during the two years immediately preceding, or

anytime after August 28, 2003, may be a member of the commission's technical advisory staff for two years following the termination of their employment with the corporation, office of public counsel or commission staff member.

8. The technical advisory staff shall never be a party to any case before the commission.

386.210. 1. The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of **the public**, any public utility or similar commission of **this and** other states and the United States of America, or any official, agency or instrumentality thereof, on any matter relating to the performance of its duties.

2. Such communications may address any issue that at the time of such communication is not the subject of a case that has been filed with the commission.

3. Such communications may also address substantive or procedural matters that are the subject of a pending filing or case in which no evidentiary hearing has been scheduled, provided that the communication:

(1) Is made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision;

(2) Is made at a forum where representatives of the public utility affected thereby, the office of public counsel, and any other party to the case are present; or

(3) If made outside such agenda meeting or forum, is subsequently disclosed to the public utility, the office of the public counsel, and any other party to the case in accordance with the following procedure:

(a) If the communication is written, the person or party making the communication shall no later than the next business day following the communication, file a copy of the written communication in the official case file of the pending filing or case and serve it upon all parties of record;

(b) If the communication is oral, the party making the oral communication shall no later than the next business day following the communication file a memorandum in the official case file of the pending case disclosing the communication and serve such memorandum on all parties of record. The memorandum must contain a summary of the substance of the communication and not merely a listing of the subjects covered.

4. Nothing in this section or any other provision of law shall be construed as imposing any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address the merits of the specific facts, evidence, claims, or positions presented or taken in a pending case unless such communications comply with the provisions of subsection

3 of this section.

5. The commission and any commissioner may also advise any member of the general assembly or other governmental official of the issues or factual allegations that are the subject of a pending case, provided that the commission or commissioner does not express an opinion as to the merits of such issues or allegations, and may discuss in a public agenda meeting with parties to a case in which an evidentiary hearing has been scheduled, any procedural matter in such case or any matter relating to a unanimous stipulation or agreement resolving all of the issues in such case.

[2.] **6. The commission may enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof, or any public utility or similar commission of other states, that are proper, expedient, fair and equitable and in the interest of the state of Missouri and the citizens thereof, for the purpose of carrying out its duties [under] pursuant to section 386.250 as limited and supplemented by section 386.030 and to that end the commission may receive and disburse any contributions, grants or other financial assistance as a result of or pursuant to such agreements or contracts. Any contributions, grants or other financial assistance so received shall be deposited in the public service commission utility fund or the state highway commission fund depending upon the purposes for which they are received.**

[3.] **7. The commission may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any railroad, public utility or similar commission, of other states or the United States of America, or any official, agency or any instrumentality thereof, except that in the holding of such investigations or hearings, or in the making of such orders, the commission shall function under agreements or contracts between states or under the concurrent power of states to regulate interstate commerce, or as an agent of the United States of America, or any official, agency or instrumentality thereof, or otherwise.**

386.374. Notwithstanding any other provision of this chapter to the contrary, the commission may establish a pilot program to consider ability to pay as a factor in setting utility rates and may establish programs for low-income residential utility customers to ensure affordable, reliable, and continuous service to such customers. In ordering such programs, the commission may require public utilities to provide information on the coordination of the program with other available low-income bill payment and energy conservation resources and the effects of the program on:

(1) The percentage of income that participating households devote to energy bills;

(2) The number of service disconnections;

(3) Utility collection costs; and

(4) Customer payment behavior, arrearages, and bad debt.

392.200. 1. Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

2. No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions. Promotional programs for telecommunications services may be offered by telecommunications companies for periods of time so long as the offer is otherwise consistent with the provisions of this chapter and approved by the commission. Neither this subsection nor subsection 3 of this section shall be construed to prohibit an economy rate telephone service offering. This section and section 392.220 to the contrary notwithstanding, the commission is authorized to approve tariffs filed by local exchange telecommunications companies which elect to provide reduced charges for residential telecommunications connection services pursuant to the lifeline connection assistance plan as promulgated by the federal communications commission. Eligible subscribers for such connection services shall be those as defined by participating local exchange telecommunications company tariffs.

3. No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.

4. (1) No telecommunications company may define a telecommunications service as a different telecommunications service based on the geographic area or other market segmentation within which such telecommunications service is offered or provided, unless the telecommunications company makes application and files a tariff or tariffs which propose relief from this subsection. Any such tariff shall be subject to the provisions of sections 392.220 and

392.230 and in any hearing thereon the burden shall be on the telecommunications company to show, by clear and convincing evidence, that the definition of such service based on the geographic area or other market within which such service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

(2) It is the intent of this act to bring the benefits of competition to all customers and to ensure that incumbent and alternative local exchange telecommunications companies have the opportunity to price and market telecommunications services to all prospective customers in any geographic area in which they compete. To promote the goals of the federal Telecommunications Act of 1996, for an incumbent local exchange telecommunications company in any exchange where an alternative local exchange telecommunications company has been certified and is providing basic local telecommunications services or switched exchange access services, or for an alternative local exchange telecommunications company, the commission shall review and approve or reject, within forty-five days of filing, tariffs for proposed different services as follows:

(a) For services proposed on an exchange-wide basis, it shall be presumed that a tariff which defines and establishes prices for a local exchange telecommunications service or exchange access service as a different telecommunications service in the geographic area, no smaller than an exchange, within which such local exchange telecommunications service or exchange access service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter;

(b) For services proposed in a geographic area smaller than an exchange or other market segmentation within which or to whom such telecommunications service is proposed to be offered, a local exchange telecommunications company may petition the commission to define and establish a local exchange telecommunications service or exchange access service as a different local exchange telecommunications service or exchange access service. The commission shall approve such a proposal if it finds, based upon clear and convincing evidence, that such service in a smaller geographic area or such other market segmentation is in the public interest and is reasonably necessary to promote competition and the purposes of this chapter. Upon approval of such a smaller geographic area or such other market segmentation for a different service for one local exchange telecommunications company, all other local exchange telecommunications companies certified to provide service in that exchange may file a tariff to use such smaller geographic area or such other market segmentation to provide that service;

(c) For proposed different services described in paragraphs (a) and (b) of this subdivision, the local exchange telecommunications company which files a tariff to provide such service shall provide the service to all similarly situated customers, upon request in accordance with that company's approved tariff, in the exchange or geographic area smaller than an exchange or such other market segmentation for which the tariff was filed, and no price proposed for such service by an incumbent local exchange telecommunications company, other than for a competitive

service, shall be lower than its long run incremental cost, as defined in section 386.020, RSMo;

(3) The commission, on its own motion or upon motion of the public counsel, may by order, after notice and hearing, define a telecommunications service offered or provided by a telecommunications company as a different telecommunications service dependent upon the geographic area or other market within which such telecommunications service is offered or provided and apply different service classifications to such service only upon a finding, based on clear and convincing evidence, that such different treatment is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

5. No telecommunications company may charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange telecommunications service provided over the same or equivalent distance between two points without filing a tariff for the offer or provision of such service pursuant to sections 392.220 and 392.230. In any proceeding under sections 392.220 and 392.230 wherein a telecommunications company seeks to charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange service, the burden shall be on the subject telecommunications company to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. The commission may modify or prohibit such charges if the subject telecommunications company fails to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. This subsection shall not apply to reasonable price discounts based on the volume of service provided, so long as such discounts are nondiscriminatory and offered under the same rates, terms, and conditions throughout a telecommunications company's certificated or service area.

6. Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.

7. The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge.

8. Customer specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services, provided such customer specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.

9. This act shall not be construed to prohibit the commission, upon determining that it is in the public interest, from altering local exchange boundaries, provided that the incumbent local exchange telecommunications company or companies serving each exchange for which the boundaries are altered provide notice to the commission that the companies approve the alteration of exchange boundaries.

10. Notwithstanding any other provision of this section, every telecommunications company is authorized to offer term agreements of up to five years on any of its telecommunications services.

11. Notwithstanding any other provisions of this section, every telecommunications company is authorized to offer discounted rates or other special promotions on any of its telecommunications services to any new or former customers.

393.015. 1. Notwithstanding any other provision of law to the contrary, any sewer corporation, municipality or sewer district established under the provisions of chapter 249 or 250, RSMo, or sections 204.250 to 204.470, RSMo, or any sewer district created and organized pursuant to constitutional authority, may contract with any water corporation, municipality, or public water supply district established under chapter 247, RSMo, to terminate water services to any customer premises for nonpayment of a sewer bill. No such termination of water service may occur until [thirty] ~~ninety~~ days after the sewer corporation, municipality or statutory sewer district or sewer district created and organized pursuant to constitutional authority sends a written notice to the customer by certified mail, except that if the water corporation, municipality or public water supply district is performing a combined water and sewer billing service for the sewer corporation, municipality or sewer district, no additional notice or any additional waiting period shall be required other than the notice and waiting period already used by the water corporation, municipality or public water supply district to disconnect water service for nonpayment of the water bill. Acting pursuant to a contract, the water corporation, municipality or public water supply district shall ~~discontinue~~ water service until such time as the sewer charges and all related costs of termination and reestablishment of sewer and water services are paid by the customer.

2. Notwithstanding any provision of subsection 1 of this section to the contrary, water service to a residence located within any county of the first classification with more than one hundred thirty-five thousand four hundred but less than one hundred thirty-five thousand five hundred inhabitants, any county of the third classification without a township form of government and with more than twenty-four thousand six hundred but less than twenty-four thousand seven hundred inhabitants, or any county of the third classification without a township form of government and with more than ten thousand two hundred but less than ten thousand three hundred inhabitants shall not be disconnected, terminated, or discontinued for nonpayment of the water bill unless the noncurrent outstanding amount of the bill exceeds fifty dollars. The provisions of this subsection shall not apply to any home rule city with more than eighty-four thousand five hundred but less than eighty-four thousand six hundred inhabitants.

3. Notwithstanding any provision of subsection 1 of this section to the contrary, water service to a residence located within any county of the first classification with more than one hundred thirty-five thousand four hundred but less than one hundred thirty-five thousand five hundred inhabitants, any county of the third classification without a township form of government and with more than twenty-four thousand six hundred but less than twenty-four thousand seven hundred inhabitants, or any county of the third classification without a township form of government and with more than ten thousand two hundred but less than ten thousand three hundred inhabitants shall not be disconnected, terminated, or discontinued for nonpayment of the water bill without the service provider first providing the residential customer with advance written notice of the proposed action. The notice shall be sent to the residential customer by certified mail and it shall be clearly written and shall include at least the following information: the proposed action, the proposed date of the proposed action, the cost of reconnection in the event of disconnection or termination of service, the reason for the proposed action, the exact amount of the arrearage, the address to which the customer should send payment, all actions which the residential customer must take to prevent the proposed action from occurring, and the telephone number or numbers the residential customer may call regarding the proposed action. The provisions of this subsection shall not apply to any home rule city with more than eighty-four thousand five hundred but less than eighty-four thousand six hundred inhabitants.

[2.] **4.** A water corporation, municipality, or public water supply district acting pursuant to a contract with a sewer corporation, municipality or sewer district as provided in subsection 1 of this section shall not be liable for damages related to termination of water services unless such damage is caused by the negligence of such water corporation, municipality, or public water supply district, in which case the water corporation, municipality, or public water supply district shall be indemnified by the sewer corporation, municipality or sewer district. Unless otherwise specified in the contract, all costs related to the termination and reestablishment of services by the water corporation, municipality or public water supply district shall be reimbursed by the sewer corporation, municipality, sewer district or sewer district created and organized pursuant to constitutional authority.